

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

SCOTT AND RHONDA BURNETT, RYAN )  
HENDRICKSON, JEROD BRIET, SCOTT )  
TRUPIANO, JEREMY KEEL, HOLLEE ELLIS, )  
and FRANCIS HARVEY, on behalf of themselves )  
and all others similarly situated, )

Plaintiffs )

v. )

Case No. 19-CV-00332-SRB )

THE NATIONAL ASSOCIATION OF )  
REALTORS, REALOGY HOLDINGS CORP., )  
HOMESERVICES OF AMERICAN, INC., BHH )  
AFFILIATES, LLC, HSF AFFILIATES, LLC, )  
RE/MAX LLC, and KELLER WILLIAMS )  
REALTY, INC., )

Defendants. )

**PLAINTIFFS' RESPONSE TO KELLER WILLIAMS'**  
**MOTION TO RECONSIDER (DOC. 1042)**

This matter was thoroughly addressed during the June 15 call. Plaintiffs' sole comment on Keller Williams' motion is to correct the company's mistaken assertion that the case will not return by October 16 "[e]ven if the Eighth Circuit were to rule today on HomeServices' appeal . . . ." (Doc. 1042 at 3).

The Court will regain complete jurisdiction over all facets of this case once the Eighth Circuit issues its mandate. *Carlson v. Hyundai Motor Co.*, 222 F.3d 1044, 1045 (8th Cir. 2000) ("Issuance of the mandate formally marks the end of appellate jurisdiction. Jurisdiction returns to the tribunal to which the mandate is directed, for such proceedings as may be appropriate") (internal quotation omitted). Under Fed. R. App. P. 41(b), the mandate issues within 7 days after

any motion for rehearing is denied. And that time is not automatically extended just because the losing party petitions for a writ of certiorari. Rather, a petitioning party must move to stay issuance of the mandate, and the Eighth Circuit will grant such a stay only upon a showing that the petition presents a “substantial question.” Fed. R. Civ. P. 41(d)(1).

In evaluating whether to stay issuance of the mandate, the Eighth Circuit considers “whether there is a reasonable probability that the Supreme Court will grant certiorari, whether there is a fair prospect that the movants will prevail on the merits, whether the movants are likely to suffer irreparable harm in the absence of a stay, and the balance of the equities, including the public interest.” *John Doe I v. Miller*, 418 F.3d 950, 951 (8th Cir. 2005). The Supreme Court grants review in very few cases, making this standard exceedingly hard to meet. Thus, HomeServices would be unlikely to obtain a stay, even if it sought one. The most probable outcome is that the Eighth Circuit will issue its mandate – and thus return full jurisdiction to this Court – well before the scheduled October 16 trial date.

Respectfully submitted,

**KETCHMARK & McCREIGHT, P.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of June, 2023, the foregoing was filed via the Court's electronic filing system, which will send notice to all counsel of record.

/s/ Scott A. McCreight  
Attorney for Plaintiffs and the Classes